

In order to prevent actual or likely multi-state taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310. (This is a GIL).

November 14, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

A private, formal letter ruling is hereby requested on the information listed below. AAA is a nationally recognized leader in sales tax software applications and this request is based upon information required for a new product development effort.

The product under development is a Sales and Use Tax application, which will help our customers in the areas of, direct payment calculations, vendor payment verification, inventory withdrawals, and asset movement.

The areas that need to be addressed are as follows:

1. Situs Determination for Inventory Removals:

A company has multiple locations within the state. Location A removes a product from inventory and sends it to Location B for internal use. The product will not be used in an exempt manner. My questions are as follows:

- a) What is the situs location of the inventory removal? Location A, where the product is removed from inventory or Location B, the location where the product will be used or consumed?
- b) Is the withdrawal from inventory considered an exercise of any right power of the product? If so, does this mean that the situs is determined to be the location where the product is first removed?

2. Taxable Basis for Inventory Removals:

After the situs of the Inventory Removal has been determined then the taxable basis for Consumers Use Tax purposes must be determined. My questions are as follows:

- a) What is the taxable basis for Manufacturers? Should the tax be calculated on the total manufactured cost, which includes materials, labor, and overhead, the material cost only, the wholesale cost, the retail cost, the original purchase price, or the sale price? If basis is the sale price, what is the definition of sales price? Is it the original cost or what the user would charge for the item on a sale?
- b) What is the taxable basis for Resellers? If the product was originally purchased for resale, should the tax be calculated on the total cost, which includes original purchase price, labor, and overhead; the wholesale cost; the retail cost; the original purchase price only; or the sale price? If basis is the sale price, what is the definition of sale price? Is it the original cost or what the user would charge for the item on a sale?
- c) What is the taxable basis if the item is a product sample that is given away free of charge? In this instance there is no retail-selling price because the sample is not manufactured with the intent of being resold.

3. Taxable Basis for Fixed Assets:

A company has multiple locations. These locations are both in-state and out-of-state. The company transfers a fixed asset from Location A to Location B for use at the new location. My questions are as follows:

- a) What is the taxable basis of fixed assets that are transferred into the state after having been used in another state? Should the taxable basis be the net book value, the original cost, the fair market value, the use tax basis for tangible personal property provided in statute if the law does not address asset movements, or another value?
- b) Will the taxable basis differ for fixed assets that are transferred from one local jurisdiction to another local jurisdiction within the same state?

4. Direct Pay Permits:

A company has been granted a Direct Pay Permit and, therefore, does not pay tax on any of its purchases. However, the company self accrues use tax instead. My questions are as follows:

- a) How should intrastate purchases be handled? Should these transactions be taxed under the Sales Tax laws as they would be if the vendor were to collect the tax, or are they subject to the Use Tax Laws? This question becomes extremely pertinent in instances where localities have enacted a sales tax but not a use tax.
- b) Do Direct Pay Permits cover both in-state and out-of-state purchases?

5. Reciprocity:

A company has multiple locations. These locations are both in-state and out-of-state. The company transfer's a fixed asset from Location A to Location B for use at the new location. If the item were originally purchased out-of-state, the Sales Tax would have been paid. My questions are as follows:

- a) Does your state have reciprocal agreements with other states?
- b) If your state has reciprocal agreements with other states, can you please provide us with a list of those states?
- c) For those states where a reciprocal agreement exists, with your state, how are taxes paid to these states applied when assets are moved from an out-of-state location? Should state tax paid in another state be credited against the current state use tax due, the county tax paid in another state be credited against the county use tax due, and the city tax paid in another state be credited against the city use tax due, etc? Or should the total combined sales tax paid be applied against the current combined use tax due?
- d) Does your state have reciprocal agreements at the local level (for state administered local taxes) when a fixed asset is moved from one in-state location to another in-state location?
- e) If reciprocal agreements exists at the local level can you please provide us with a list of those cities, counties, etc. that have reciprocal agreements?
- f) For those localities were a reciprocal agreement exists, within your state, then how are taxes paid to these local jurisdictions applied when assets are moved from one in-state location to another in-state location? Should the county sales tax paid be credited against the county use tax due, and the city sales tax paid be credited against the city use tax due, etc? Or should the total combined local sales tax paid be applied against the current combined use tax due?

6. Credit:

If the item were originally purchased out-of-state, the Seller's Use tax would have been paid. If the out-of-state vendor were not registered to collect in the original state, a Consumers Use tax would have been self-assessed. My questions are as follows:

- a) Is credit given for Use Tax Paid in another state?
- b) Are all taxes previously paid on a transferred item of tangible personal property allowed as credit, or are there limitations?

We appreciate you consideration on the above and thank you in advance for your assistance. The up front inclusion of this information in our database will guarantee the accuracy of our product and avoid any future audit complications for both the state and our customers. If possible, we ask for your response by the end of this month. If this is not possible, we would appreciate notification as to when a response might be forthcoming. Your response can be forwarded to:

NAME/ADDRESS

Should you have any questions or require further clarification, please contact me.

The Use Tax is a tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. The Use Tax is paid to Illinois retailers registered to collect Use Tax. If the Use Tax is not paid to an Illinois registered retailer, the purchaser must self-assess the Use Tax at the rate of 6.25% and remit it to the Department. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.

Therefore, when retailers take an item from inventory and "use" the item, a Use Tax liability is incurred. This would be the case, for example, where a retailer takes an item from inventory and makes a gift of it to someone. In such a situation, the retailer is the user of the item and incurs a Use Tax liability on his cost price of the item.

In addition, the Use Tax Act provides that in order to prevent actual or likely multi-state taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310, enclosed. In addition, depreciation is allowed for out-of-State use. See the enclosed copy of 86 Ill. Adm. Code 150.110.

For your general information, please see the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

Businesses may participate in a direct payment program when Department approval is obtained. To make purchases under the program, such businesses must present to their seller a signed Form ST-46, Direct Pay Permit that has been issued by the Department. For further information see the enclosed copy of Informational Bulletin FY 2002-33. See 86 Ill. Adm. Code 130.2500 et seq. The program was effective July 1, 2001. Applicants who have been approved to participate in the Direct Payment Program will be issued a Direct Pay Permit ("permit") by the Department, which participants may provide to retailers. Use of the permit relieves the permit holder from paying Use Tax (including any local occupation tax reimbursements of taxes administered by the Department) to the retailer at the time of purchase of qualifying tangible personal property. By using the permit, the permit holder voluntarily agrees to assume the liabilities of the retailer to report and

remit Retailers' Occupation Tax (including any local occupation taxes administered by the Department) directly to the Department.

Retailers who are provided with a Permit from a permit holder purchasing qualifying tangible personal property are relieved of their obligation to remit the Retailers' Occupation Tax (including any local occupation taxes administered by the Department) incurred on the sale of that qualifying tangible personal property. Retailers who are presented with such permits are also relieved of the obligation to collect Use Tax (including any local occupation tax reimbursements of taxes administered by the Department) from the permit holder.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.